

(1978) 10 MAD CK 0027
In the Madras High Court
Case No : C.R.P. 1688 of 1977

M. Saraswathi Achi

APPELLANT

Vs

M/s. Chitralaya Pictures (P) Ld, Madras-17

RESPONDENT

Date of Decision : 23-10-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 21 Rule 46C

Citation : (1979) ILR (Mad) 77

Hon'ble Judges : Ramaprasada Rao, C.J

Bench : Single Bench

Advocate : K. Shanmukham and P. Murugaiyan, for the Appellant; N.S. Varadachari and T.V. Ramanujom, for the Respondent

Judgement

Ramaprasada Rao, C.J.—This is yet another instance to show how a Judge in the City Civil Court, Madras acts and how he understands the provisions of the Civil Procedure Code. Elementary principles as to what is an issue and what has to be done when the Legislature mandates a Court to determine an Issue have not been borne in mind by this Judge. A petition for attachment of certain moneys in the hands of the respondent as garnishee was taken in the year 1972. That was in E.P. No. 365 of 1972. Then the garnishee-respondent did not file any counter affidavit denying that it had no amount belonging to the judgment-debtor in its hands. Thereafter, the order was made absolute on 15th March 1972. In spite of the fact that such an order, which was an order which could have been passed by a competent court, was passed and remained unchallenged for nearly a year thereafter, the garnishee did not take any steps to comply with the order passed against it. This, therefore, necessitated the decree-holder to file the present petition E.P. No. 2012 of 1972 on the file of the City Civil Court, Madras, for a direction to the garnishee to bring the amount, already attached in E.P. No. 365 of 1972 and said to be with it but belonging to the judgment-debtor, to court. It is necessary at this stage to state that there was a direction by this Court on an earlier occasion in the very same proceedings wherein it was made clear that if the garnishee disputes the liability, an enquiry as contemplated under Or.21,

R.46-C, C.P.C. has to be held by the Executing Court. When a petition, as already stated, to bring the amount to Court, after the order of attachment of the moneys in the hands of the garnishee had become final, was filed, the garnishee filed Exs.R1 and R2 and did not plead otherwise excepting through affidavits filed by it. Ex.R1 is an agreement between the garnishee and the judgment-debtor. Ex.R2 is a self-serving statement of account prepared by the garnishee to show that on the date when it was called upon to bring the amount as required in the present petition E.P. No. 2012 of 1972, it had no moneys with it. Ex.R2 gained acceptance with the Court below who characterised the said document as clinching in establishing that no amount was available with the garnishee as if belonging to the judgment-debtor. On that bait, the lower Court thought that no question of sending for any amount as if due by the garnishee to the judgment-debtor would arise and it dismissed the present execution petition also. It is against that the present Civil Revision Petition has been tiled. Mr. Shanmukham, learned counsel for the petitioner, after inviting my attention to the scope and content of Or. 21, R. 46-C, C.P.C. says that there was no adjudication on the issue whether any amount was due by the garnishee to the judgment-debtor and that issue which is a relevant issue which has to be enquired into under the prescribed norms as set out in Or.21 R.46-C, C.P. Code has not been attempted by the Court below.

2. He, therefore, complains that the order suffers from a material irregularity. Mr. Varadachari, on the other hand, appearing for the respondent, would still rely upon Ex.R2. According to him, account books in support of Ex.R2 were available on the date when the matter was enquired into by the Court below. What prevented the garnishee to speak about the correctness of the self-serving statement Bx.R2 is not clear. The question is whether the Court has discharged its legal duty as contemplated under Or. 21, R. 46-C, C.P.C.

3. It is only by an amendment by Amending Act 104 of 1976, sub-Rules 46-A to 46-I were introduced and made part of the Civil Procedure Code. Rule 46-C of Or. 21 in the main runs as follows:

"Trial of disputed questions: Where the garnishee disputes liability, the Court may ardor that any issue or question accessory for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders as it teems fit;

Provided that, if the debt in respect of which the application under Rule 46-A is made in respect of a sum of money beyond the pecuniary jurisdiction of the court, the court shall send the execution case to the court of the District Judge, to which the said court is subordinate, and, thereupon the court of the District Judge or any other competent court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that court.

No doubt, the Madras amendment is to the following effect:

"If the garnishee disputes his liability or its extent the court may decide the dispute and thereafter direct the garnishee within such time as it may allow to pay into court such sum as it has found to be due from him or so much thereof as may be sufficient to satisfy the decree and the costs of the execution proceedings;

Provided that where the garnishee admits his liability but disputes its extent and the decree holder does not seek to recover from the garnishee any sum in excess of what he admits is due from him, the court shall not be bound to decide the dispute and may direct the garnishee to pay such sum or so much thereof as is sufficient to satisfy the decree and the costs of the execution proceedings".

4. There is no guideline prescribed in the Rules framed in our Court as to the manner in which a dispute as between a garnishee and a decree holder, in case the garnishee disputes his liability, has to be decided excepting for a broad statement and a direction under Madras Rule 46-C which says that "if the garnishee disputes his liability or its extent, the court may decide the dispute and thereafter direct the garnishee within such time as it may allow to pay into court such sum as it has found to be due from him..."

5. The question is whether by our Court adopting the language as it stands which does not quite fit in with the language deployed by the Parliament when it introduced Or. 21, R. 46-C, the procedure which is contemplated or intended under Or. 21, R. 46C in the main Code can be given the go-by by a bare enquiry on affidavits or a decision rendered on evidence which is not acceptable. The Madras amendment contemplates that the Court should decide the dispute if the garnishee disputes his liability or its extent. The Parliament prescribes that where the garnishee disputes a liability, the Court may order that any issue or question necessary for the determination of the liability shall be tried as if it were an issue in a suit and upon the determination of such issue shall make such order or orders as it deems fit. The compendious manner in which our Court has amended Or. 21, R.46C, C.P.C, cannot be misunderstood as if this Court wanted to depart from the real intention, purpose and meaning of Or. 21, R. 46C. Presumably, the amendment in our Court was made on the foot that making a decision in a dispute would obviously unfold within its compass a decision on the issue between the parties. "Issue" as defined in Or.14, R.1 C.P.C, arises when a material proposition of fact is affirmed by the one party and denied by the other. Even so, a decision on a disputed liability would arise under similar circumstances. In my view, therefore, the non-adoption of the language in toto by our court while amending Or. 21, R. 46-C, does not mean that an issue need not be framed in such circumstances when the garnishee disputes his liability or its extent and that the Court is enabled automatically to decide without evidence the alleged dispute and more so be satisfied with self-serving evidence. If at least acceptable materials, may be in the shape of affidavits, have gone into the records, then that might form the foundation for a decision in certain circumstances. But in the instant case, what prompted the Court below to accept

the garnishee's story was a self-serving statement, Ex.R2 filed by the garnishee to prove that it was not liable to pay any amount to the judgment-debtor. We have already referred to the fact that the final order was made compelling the garnishee to respect an order of Court even as early as 15th March 1972. The garnishee was, therefore, under a legal obligation to comply with such an order of a Competent Court. We have already seen that the garnishee did not even file a counter affidavit questioning the request of the decree-holder who sought for an attachment of certain moneys in its hands as if such moneys belonged to the judgment-debtor. It was only at the time when the garnishee was asked to deposit the amount which it was bound to do under the earlier orders of Court that it came forward with a statement of account prepared by it under Ex.R2 for which there was no attempt of corroboration by acceptable materials such as account books kept in the regular course of business. The bare statement of account was characterised by the learned City Civil Judge as clinchingly establishing that no amount was available with the garnishee as belonging to the judgment-debtor. He would characterise that piece of evidence which is certainly not admissible in law as "specific evidence" on record to establish that no amount is available with the garnishee. This supposition not only suffers from the defect that it is a misapprehension but it also proves as to how the learned City Civil Judge did not even refer to or apply his mind to the provisions of law concerned and also bear In mind the elementary principle that self-serving statements filed by a litigant cannot by itself be clinching evidence or specific evidence. In fact, it is not evidence at all under any provision of the Evidence Act, unless it has been proved in a manner known to law by corroborative evidence, which evidence also has to satisfy the test of acceptability under the provisions of the Evidence Act. This not having been done, I am of the view that no decision as contemplated under Or. 21 R.46-C, within the meaning of the Madras amendment and certainly not a decision on an issue within the meaning of Or. 21 R 46-C, of the main Code has been rendered by the Court below. The order, therefore, is set aside, the Civil Revision Petition is allowed and the matter is remitted back to the file of the City Civil Court, Madras, for an enquiry. The learned City Civil Judge shall enquire into this in November 1978 and report to this Court about its disposal by the end of November 1978.